

complaint

Mrs M has complained about the way Capital One (Europe) Plc resolved the mis-sale of a payment protection insurance (PPI) policy.

background

Mrs M had a credit card with Capital One, which had PPI. Unfortunately, she fell into some difficulties. So in 2006, she made a part payment of what she owed in order to settle the account. Then Capital One agreed not to chase her for the rest.

In 2016, Mrs M complained about the sale of the PPI. Capital One agreed it had been mis-sold and worked out they owed her £191.90.

However, Capital One said there was still £567.71 remaining unpaid on the credit card, which Mrs M owed them. So they used the PPI refund to reduce the outstanding balance.

Mrs M wasn't happy with that. She pointed out that she settled the credit card a long time ago. She said that Capital One was effectively chasing her for the debt, and that they were breaking the Limitation Act.

Our adjudicator looked into things. She explained that while the debt was part settled, it still existed, and Capital One were still able to use the PPI refund to lower it. She pointed out that some of the outstanding debt was for PPI, so it made sense to use the PPI refund to reduce it. And she said it was a fair thing for Capital One to do, given that the credit card debt and the PPI refund came from the same account. Mrs M disagreed with our adjudicator, so the complaint's been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I think Capital One have already dealt with things fairly here – I'll explain why.

When Mrs M partially settled her credit card account, she paid what she could, but she still owed Capital One £567.71. And that debt continued to exist. It's just that Capital One agreed not to chase her for the money anymore, such as by using debt collectors.

Capital One didn't chase Mrs M for any money in this case. It was Mrs M who chased Capital One for a debt, for PPI. It turned out that Capital One owed her £191.90 for that. So what Capital One did was use their debt to her in order to reduce her debt to them. They didn't actually chase her for anything. And since both debts related to the same credit card, it seems reasonable to use one debt to lower the other.

Mrs M said that the debt was "statute barred" under the Limitation Act. That may be the case, and I understand why Mrs M has brought it up. But when a debt is statute barred, it doesn't stop existing. If the debt's statute barred, that just means Capital One can't take formal action against Mrs M, such as bringing a court case against her. And Capital One haven't taken any formal action against Mrs M here. They've just used her credit card PPI refund to reduce the credit card debt, and they're still allowed to do that.

We can think of it this way: imagine if Mrs M owed a friend £20. But that same friend owed Mrs M £50. It wouldn't feel fair if the friend wanted Mrs M to pay them £20, when they owed her more money than she owed them. On the other hand, it's fair to take Mrs M's £20 debt to the friend, and use it to reduce the friend's larger debt to Mrs M, from £50 down to £30. And that would be a very practical solution, too.

Similarly, I think it's both fair and practical for Capital One to use what they owe Mrs M in PPI to reduce what she owes them on the very same credit card. So while I know this might disappoint Mrs M, I hope this explains why I don't think Capital One have to pay her directly.

my final decision

For the reasons I've explained, I think Capital One (Europe) Plc have already resolved the mis-sale of Mrs M's PPI in a fair way.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to accept or reject my decision before 22 January 2018.

Adam Charles
ombudsman